mony, and that the defendant had first postponed and then refused to go through with the religious ceremony. *Held,* plaintiff was induced to enter into a marriage with the defendant "solely by reason of his false and fraudulent misrepresentations," and that she was entitled to a decree adjudging the marriage null and void. *Rubinson* v. *Rubinson* (Sup. Ct., 1920), 181 N. Y. S. 28.

Schacter v. *Schacter* (1919), 178 N. Y. S. 212, is a decision apparently squarely the other way. The *Schacter case* is discussed *supra,* p. 243.

MUNICIPAL CORPORATIONS—CORPORATE FUNCTIONS—LIABILITY FOR TORTS OF FIREMEN.—Plaintiff's testate died as the proximate result of injuries sustained by being struck by defendant's city fire hose truck, operated negligently by defendant's servants. Upon demurrer it was *held* that plaintiff could recover. *Fowler* v. *City of Cleveland* (Ohio, 1919), 126 N. E. 72.

It is well-settled law that when a municipal corporation exercises a purely governmental function no liability attaches to it for its torts. *Hill* v. *Boston,* 122 Mass. 344. This principle is admitted everywhere except in the admiralty tribunals of the United States. *Workman* v. *New York City,* 179 U. S. 552; see 5 MICH. L. REV. 275. The courts are, nevertheless, not in accord as to what functions come within the scope of this term. Among the acts which are almost universally admitted to be public or governmental are those of its police officers (*Lafayette* v. *Timberlake,* 88 Ind. 330); of its officers and agents in the maintenance, repairing, or management of a city hall used for city business (*Snider* v. *St. Paul,* 51 Minn. 466; cf. *Little* v. *Holyoke,* 177 Mass. 114, and *Wilcox* v. *Rochester,* 190 N. Y. 137); of those engaged in the duty of erecting and maintaining public schools (*Hill* v. *Boston, supra; Kinnare* v. *Chicago,* 171 Ill. 332; *contra, Higbie* v. *N. Y. Board of Education,* 122 N. Y. App. Div. 483); and of health officers (*Webb* v. *Detroit Bd. of Health,* 116 Mich. 516). Likewise, the prevailing rule is that municipal corporations are not liable for injuries occasioned by negligence in using or keeping in repair the fire apparatus owned by them. *Wilcox* v. *Chicago,* 107 Ill. 334. With this case compare *Kies* v. *Erie,* 169 Pa. St. 598. See also the text and cases cited in DILLON, MUN. CORP. [5th Ed.], Sec. 1660. In the instant case the Ohio court expressly overruled its previous holding in *Frederick* v. *Columbus,* 58 Oh. St. 538, and, by implication, the one in *Wheeler* v. *Cincinnati,* 19 Oh. St. 19, on the ground that the act complained of was purely ministerial. It is believed that Justice Wanamaker, who concurred in the result only, is correct when he contends that the act was done in the exercise of a governmental function; and it is submitted that, while the result reached may be a salutary one from the plaintiff's viewpoint, the decision is a glaring example of judicial legislation and in conflict with the well-known principle of *stare decisis.* See also the note in 17 MICH L. REV. 503.

PARTIES—JOINDER OF DEFENDANTS IN TORT ACTIONS.—Six mining companies severally caused refuse to be discharged into a stream, thereby injuring the lands of a lower riparian owner, who joined them as defendants in

an action of trespass on the case. There was no allegation of concert, collusion, or the pursuit of a common design. *Held,* on demurrer to the declaration, that no joint liability was shown, and therefore there was a misjoinder of defendants, and the demurrer was sustained. *Farley* v. *Crystal Coal & Coke Co.* (W. Va., 1920), 102 S. E. 265.

This case fully examines the authorities on the question of joint liability, and concludes that there is no such liability on these facts, going so far as to expressly overrule a recent prior case which laid down the opposite rule. Conceding that the court was right on this point, did it follow that the demurrer must be sustained and the parties compelled to maintain and defend as many separate actions as there were defendants? The common law required such separate actions. But inasmuch as a single action is much superior in point of justice and convenience, some modern statutes have expressly authorized the joinder of defendants severally liable, and the rendition of separate judgments for or against each. England, Order 16, rule 4; Michigan, C. L. 1915, Sec. 12366. There is no reason, however, why the courts should not themselves allow such a joinder, without any statute, under their inherent power to regulate procedure. If separate actions had been brought against each tort feasor on the facts shown in the principal case, it would have been within the discretionary power of the court to order them consolidated for trial. *Mutual Life Ins. Co.* v. *Hillmon,* 145 U. S. 285. Why, then, should not the court have treated the case as a consolidation of separate actions against the several defendants, and retained it for the verdict of the jury upon the merits of the case and the apportionment of damages among those defendants proved to be liable, instead of sustaining the demurrer and forcing the case out of court? In *Snow* v. *Rudolph* (Tex. Civ. App.), 131 S. W. 249, where a single cause of action was improperly split into several actions, the court treated a consolidation of these cases as the full substantial equivalent of a single action, and this was held on appeal to have cured the error. It would require no greater exercise of judicial ingenuity to treat a single action against several tort feasors as the full substantial equivalent of a consolidation of several actions against each, and in this way judicially permit the same procedural liberalty which the jurisdictions above mentioned have secured through legislation. A still keener appreciation of its obligation to make rules of procedure strictly subservient to the broader ends of justice would doubtless justify the court in wholly abandoning the common law restriction and adopting the statutory rule above referred to as a general rule of practice.

SALES—EFFECT OF FRAUDULENT MISREPRESENTATIONS.—In an action by a vendee of stock to recover the purchase price on the ground that, by false and fraudulent representations, he had been induced by a company to buy stock therein, in the belief that it was another and different company, *held,* that he might have rescinded without showing damage had he elected to do so with reasonable promptness, but this right is lost by unreasonable delay. *Everson* v. *J. L. Owens Mfg. Co.* (Minn., 1920), 176 N. W. 505.